

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

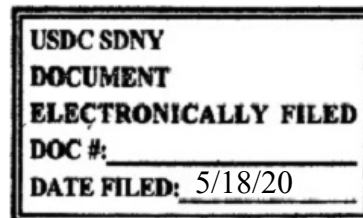
MANUEL ARIAS, et al.,

Plaintiffs,

-against-

A & J DELI FISH CORP., et al.,

Defendants.



19-CV-4042 (ALC) (BCM)

**ORDER**

**BARBARA MOSES, United States Magistrate Judge.**

By Order dated February 20, 2020 (Feb. 20 Order) (Dkt. No. 35), the Court (a) granted the motion of attorneys Sima Asad Ali and Andrea Marie Moss for leave to withdraw as counsel for defendants A & J Deli Fish Corp. d/b/a Aurora Fish Grill and Julio Castillo; (b) scheduled a status conference for March 24, 2020; (c) directed defendant Castillo to appear at the March 24, 2020 conference in person and to promptly file a Notice of Pro Se Appearance (if he wished to proceed *pro se*); and (d) directed defendant A & J Deli Fish Corp. to retain counsel and appear through counsel at the March 24, 2020 conference. The Court directed withdrawing attorneys Ali and Moss to serve the Court's February 20 Order on defendants and to file proof of such service. *Id.* at 2.<sup>1</sup>

By Order dated March 16, 2020 (Dkt. No. 36), the Court converted the March 24, 2020 status conference to a telephonic conference in light of the national public health emergency resulting from the outbreak of the COVID-19 virus, and provided the parties dial-in information for that conference. On March 17, 2020, the Court mailed a copy of the March 16 Order to defendant Castillo.

On March 24, 2020, the Court held a telephonic conference. Plaintiffs appeared by counsel. Neither defendant appeared, in person or through counsel.

Plaintiffs sought leave to move for a judgment of default against defendants. However, in light of (a) the ongoing national health emergency, (b) defendant Castillo's *pro se* status, and (c) the failure of withdrawing counsel to file a proof of service of the Feb. 20 Order, I issued an order dated March 25, 2020 (March 25 Order) (Dkt. No. 39) scheduling a further teleconference to take place on May 18, 2020. The March 25 Order provided dial-in information for the May 18 conference and included the following warnings:

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<sup>1</sup> In a call with the Court's staff on March 23, 2020, attorney Moss assured the Court that, though no proof of service had been filed, her firm had promptly served the February 20 Order on defendants and had followed up with a phone call to confirm receipt. Attorney Moss also advised the Court's staff that she would be filing a proof of service that day (*i.e.*, March 23, 2020); however, no such proof of service was ever filed. Consequently, the Court has not yet directed the Clerk of Court to terminate attorneys Moss and Ali as counsel of record in this action. *See* Feb. 20 Order, at 2.

**All parties must attend the conference (telephonically). Since defendant A & J Deli Fish Corp. is not a natural person, it must defend this action and attend the conference through counsel. Defendant Julio Castillo must also attend the conference, either personally or through counsel.**

**Defendants are advised that if they fail to call in to the May 18, 2020 telephonic conference, a judgment of default could be entered against them.**

March 25 Order, at 2.

The March 25 Order was mailed to defendants twice: once by the Court and once by plaintiffs' counsel. (Dkt. No. 40.)

On May 18, 2020, plaintiffs appeared by counsel for the telephonic conference. Neither defendant appeared, in person or through counsel. Defendant Castillo has not, to date, filed his Notice of Pro Se Appearance. Nor, to date, has any new attorney filed a notice of appearance or other paper on behalf of either defendant.

Consequently, as discussed during the May 18 teleconference, plaintiffs may seek a Certificate of Default (*see* Fed. R. Civ. P. 55(a)) against defendants and may thereafter move for the entry of a default judgment. *See* Fed. R. Civ. P. 55(b); Local Civil Rule 55.2. Plaintiffs shall serve their default papers upon defendants, *see* Local Civil Rule 55.2(c), and shall also serve a copy, by mail, upon defendants' original counsel, and file proof of such service on ECF.

Dated: New York, New York  
May 18, 2020

**SO ORDERED.**



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**BARBARA MOSES**  
**United States Magistrate Judge**